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The Emotional Labour of Judges in Jury Trials

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Abstract

Judges are required to suppress and manage their own emotions as well as those of other court users and staff in their everyday work. Previous studies have examined the complex emotional labour undertaken by judges, but there is limited research on the emotion management performed by judges in their interactions with jurors. Drawing on a qualitative study of judge-jury relations in criminal trials in Ireland, we illustrate how judges learn and habituate emotional labour practices through informal and indirect processes. Judges describe managing their emotions to demonstrate impartiality and objectivity. Their accounts also underline the importance of balancing presentations of neutrality with empathy, as well as being mindful of the potential emotional toll of jury service on jurors.

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1. INTRODUCTION

Emotions have been 'formally excised' from the application of judicial authority.¹ This is because the law itself has been regarded as rational in nature, which in turn has produced a dichotomised view of reason and emotion.² Thus, legal rationality is perceived to be impervious to emotional influences, which reinforces its link to rationality, reason,³ and impartiality.⁴ Such interpretations of the law have been central to judicial reasoning, thus making 'an emotional judge...by definition a bad judge'.⁵ This is further supported by the notion that positive public perception of judges are based on the understanding that they are 'impartial/non-biased and therefore emotionless'.⁶ Judges are thus expected to achieve this by shutting off all their feelings.⁷ This, it has been argued, leads to a situation where it has been considered unnecessary to talk about the emotional skills needed by judges in the management of their own emotions and those of others.⁸

However, as Maroney suggests, quoting Jackson J, a US judge: 'emotionless judges are "mythical beings", like "Santa Claus or Uncle Sam or Easter bunnies"'.⁹ Maroney further explains that, '[I]t is not just unrealistic as a goal; it is destructive as a value'.¹⁰ Expecting judges to eliminate all emotion effectively means the suppression of emotion. This can lead to "maladaptive behaviour" rather than encouraging judges to develop adaptive forms of emotion regulation'.¹¹ The results can mean judges are 'less able to recognize and respond to their work-related emotions', allowing undesirable emotions to surface, which may have negative physical and mental health repercussions.¹²

¹ S. Roach Anleu et al, 'The Emotional Dimension of Judging, Issues, Evidence, and Insights' (2016) 52 *Court Review: The J. of the Am. Judges Association* 60 at 60.

² T.A. Maroney, 'Judges and their Emotions' (2013) 64(1) *Northern Ireland Legal Q.* 11.

³ J.A. Scarduzio, 'Maintaining Order Through Deviance? The Emotional Deviance, Power, and Professional Work of Municipal Court Judges' (2011) 25(2) *Management Communication Q.* 283.

⁴ S.S. Daicoff, 'Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46(5) *The American University Law Review* 1337.

⁵ T.A. Maroney and J.J. Gross, 'The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective' (2014) 6(2) *Emotion Rev.* 142 at 142.

⁶ *id.*

⁷ Maroney, *op. cit.*, n.2.

⁸ Maroney and Gross, *op. cit.*, n.5.

⁹ Maroney, *op. cit.*, n.2. p. 13 quoting *United States v Ballard*, 322 US 78, 93 94 (1944) (Jackson J dissenting).

¹⁰ Maroney, *op. cit.*, n.2. p. 15.

¹¹ Maroney and Gross, *op. cit.*, n.5. p. 143.

¹² *id.*, p. 149.

Researchers have recognised that judges 'experience emotion, expend energy to cope with it and find that effort difficult'.¹³ Furthermore, recent scholarship sheds light on the emotional labour of judicial officers, and particularly how judges in the courtroom must manage both their own and others' emotions in accordance with professional occupational norms.¹⁴ This work analyses how judges manage emotions in the courtroom in such a way as to demonstrate neutrality, impartiality and objectivity,¹⁵ often focusing on their interactions with certain court actors, namely lawyers, jurors, witnesses, victims and defendants.

While recent years have seen the development of a rich international literature on jury procedure and judge-jury interactions,¹⁶ emotional labour has not yet been used to examine the nature of the judge-jury relationship. In some jurisdictions, for example in Sweden - where much judicial emotional labour research has been conducted - there are no juries.¹⁷ In jurisdictions where juries play a role in the criminal legal process, the judge and jury engage in an 'ongoing partnership'¹⁸ in which the judge plays a central role in the jury's work,¹⁹ opening the possibility of analysis of the emotional labour performed by judges in the direction and management of juries.²⁰ Moreover, as academic interest in emotional labour in judicial practice has grown internationally, with existing studies focused on the experiences and views of judges

¹³ *id.*, p. 144.

¹⁴ S. Bergman Blix and Wettergren, 'Humour in the Swedish Courts: Managing Emotions, Status and Power, in *Judges, Judging and Humour* (eds) J.M. Davies and S. Roach Anleu (2018) 179-209; S. Bergman Blix and Å. Wettergren, *Professional Emotions in Court: A Sociological Perspective* (2019); Maroney, *op. cit.*, n.2; T.A. Maroney, 'Empirically Investigating Judicial Emotion' (2019) 9(5) *Oñati Socio-Legal Series* 799; Maroney and Gross, *op. cit.*, n.5; S. Roach Anleu and K. Mack, 'Magistrates' Everyday Work and Emotional Labour' (2005) 32(4) *J. of Law and Society* 590; Roach Anleu et al, *op. cit.*, n.1; S. Roach Anleu and K. Mack, 'Judicial Humour and Inter-Professional Relations in the Courtroom' in *Judges, Judging and Humour*, eds J.M. Davies and S. Roach Anleu (2018) 141-178;; S. Roach Anleu et al, 'Researching Judicial Emotion and Emotion Management' in *Research Handbook in Law and Emotion*, eds S.A. Bandes et al (2021) 180-196; Scarduzio, *op. cit.*, n.3.

¹⁵ M. Wojciechowski et al, 'Emotional Labour of Judges' (2015) 10(1) *Archiwum Filozofii Prawa i Filozofii Społecznej* 97.

¹⁶ For example, on responses to the challenge of online jury misconduct, see: D. Harvey, 'The Googling Juror: The Fate of the Jury Trial in the Digital Paradigm' (2014) 2 *New Zealand Law Review* 203; K. Hogg, 'Runaway Jurors: Independent Juror Research in the Internet Age' (2019) 9 *Western Journal of Legal Studies* 1. On the provision of aids to deliberations see: R.G. Boatright and B. Murphy, 'Behind Closed Doors: Assisting Jurors with Their Deliberations' (1999) 83 *Judicature* 52; J.R.P. Ogloff et al, *The Jury Project: Stage 1 – A Survey of Australian and New Zealand Judges* (2006). On an increasing emphasis on the responsibility of trial judges to ensure efficiency in the management of trials, see: P. Darbyshire, 'Judicial Case Management in Ten Crown Courts' (2014) *Criminal Law Review* 30. On judicial perspectives on the judge-jury relationship, see: M. Coen, N. Howlin, C. Barry and J. Lynch, *Judges and Juries in Ireland: An Empirical Study* (2020).

¹⁷ Except where the case relates to the freedom of the press. C. Diesen, 'Lay Judges in Sweden: A Short Introduction' (2001) (1-2) *Revue Internationale de Droit Pénal* 313-315.

¹⁸ N.S. Marder, 'Juror Bias, Voir Dire, and the Judge-Jury Relationship' (2015) 90 *Chi-Kent L Rev* 927, at 929.

¹⁹ N.S. Marder, 'Jury Nullification: Don't Ask Don't Tell?' (2021) 17 *Law, Culture and the Humanities* 404.

²⁰ Diesen, *op. cit.*, n.17.

in Australia²¹, Sweden²², Poland²³ and the United States²⁴, there remains a dearth of scholarship on the emotional labour expected of judges in Ireland, a jurisdiction which differs from other common law countries in judicial education and the development of judgecraft.²⁵

This article therefore contributes to existing scholarship by developing the literature on the emotional labour of judges in two areas. First, it expands understanding of the emotional labour of judges by considering how judges manage emotions in their interactions with juries, which has remained an unexplored topic in previous research. It also represents the first Irish research on emotional labour in judicial practice, thereby adding to extant knowledge on the views and experiences of judges of managing both their own emotions and those of other court users and actors.

This article draws on data from a research project on judge-jury interactions in Ireland. We sought to explore judicial and practitioner perspectives on how judges interact with jurors in criminal trials. As part of this study, we conducted interviews with 22 judges. Whilst this research was not originally designed to explore judges' perspectives on emotions and emotional labour, the saliency of emotions and emotional labour was identified during the fieldwork and analysis stages. Following a review of relevant literature, this article focuses on four themes drawn from our interviews with judges: how judges learn the feeling rules of their roles, how they manage their own emotions when interacting with jurors, how they manage the emotions of jurors, and how they use emotion management strategies to mitigate the emotional impact of jury service. We conclude by considering the potential consequences for judges of performing emotional labour and how judges cope with the negative consequences that flow from that. We then discuss possible ways of supporting judges who are expected to perform emotional labour.

2. EMOTIONAL LABOUR: AN OVERVIEW

²¹ Roach Anleu et al, op. cit., n.1; Roach Anleu and Mack (2005), op. cit. n.14; S. Roach Anleu and K. Mack, *Judging and Emotion: A Socio-legal Analysis* (2021).

²² Bergman Blix and Wettergren (2019), op. cit., n.14.

²³ Wojciechowski et al, op. cit., n.15.

²⁴ Maroney, op. cit., n.2; Scarduzio, op. cit., n.3.

²⁵ N. Howlin, M. Coen, C. Barry and J. Lynch, '“Robinson Crusoe on a desert island”? Judicial education in Ireland, 1995–2019' (2022) 42 *Legal Studies* 525.

We use the concept of emotional labour as an analytical framework to explore how Irish judges manage their own emotions and those of jurors. Emotional labour was first defined by Hochschild as 'the management of a way of feeling to create a publicly observable facial and bodily display...for a wage'.²⁶ Thus, emotional labour derives from the expectation that a worker manages their emotions - and the emotions of others - as part of their job role. Jobs that include emotional labour must entail face-to-face or voice-to-voice contact with the public, with workers obliged to manage the emotions of others, and the emotional aspect should be controlled in some way by an organisation.²⁷

Originally, emotional labour was used in the analysis of service workers with emotions being controlled by an employer often through scripted emotional labour expectations.²⁸ However, more recently, it has been recognised that there are job roles, such as that of a judge, which, while having direct contact with the public and the expectation that they manage emotions of others, 'do not work with an emotional supervisor immediately on hand'.²⁹ Judges are certainly afforded more autonomy in the emotional labour they perform, but indeed not being directly supervised can, as Wouters suggests, result in more emotion management than more closely monitored workers.³⁰ This is because judges 'are still subject to feeling rules established by professional norms, ethical statements, the risk of an appeal and denunciatory judicial comment, and/or adverse media reporting.'³¹

Feeling rules are 'rules or norms according to which feelings are judged appropriate to accompanying events'.³² Hochschild identifies three types of feeling rules: societal, organisational and occupational. Societal feeling rules emanate from general cultural norms which filter into the organisation.³³ Organisational feeling rules ensure the aims and objectives of the organisation are fulfilled.³⁴ Occupational feeling rules derive from an organisation's

²⁶ A.R. Hochschild, *The managed heart: Commercialization of human feeling* (1983) 7fn.

²⁷ id. p. 8.

²⁸ S. Fineman, 'Emotional arenas revisited' in *Emotion in organizations* (ed) S. Fineman (2003) 1-24 cited in Scarduzio, op.cit., n.3 p. 286.

²⁹ Hochschild, op.cit., n.26. p. 153.

³⁰ C. Wouters, 'The Sociology of Emotion and Flight Attendants: Hochschild's *The Managed Heart*' (1989) 6, *Culture & Society* 95 at 100.

³¹ Anleu Roach and Mack (2005), op. cit., n.14, p. 592.

³² Hochschild, op. cit., n.26, p. 59.

³³ S. Mann, 'Emotional labour in organizations' (1997) 28(6) *Leadership & Organizational Development J.* 552.

³⁴ B.E. Ashforth and R.H. Humphrey, 'Emotional Labor in Service Roles: The Influence of Identity' (1993) 18(1) *Academy of Management Rev.* 88.

occupational cultures and are often based on codes of practice which dictate appropriate behaviours, develop task rituals, and apply work codes for routine practice.³⁵ In her examination and extension of Hochschild's work on emotional labour, Bolton describes what she terms as 'professional feeling rules'. Professional feeling rules are relevant to occupations with high social status and a public service element, such as judicial officers, and are internalised through socialisation with other members of the professional group.³⁶ Often described as a 'mask' which must not slip, the nature of professional feeling rules means the mask shields the professional 'from the emotional demands of the job', as well as ensuring the 'extraordinary effort' involved in this work 'is hardly seen as work at all'.³⁷ This article explores how professional feeling rules influence Irish judges as they become acculturated to judicial feeling rules and collegial expectations related to appropriate emotional performances in court settings.

Hochschild describes two strategies workers use to conform to feeling rules. Surface acting is where workers' emotional displays do not match their feelings, but instead they feign them to conform to prescribed feeling rules³⁸ or display rules³⁹ such as when a newly appointed judge displays confidence when in fact they may feel nervous. In contrast, deep acting recognises that displaying a certain emotion might not be enough. Rather, workers are expected to feel a certain way. Workers therefore engage in deep acting in an attempt to harmonise emotional displays and feelings either directly through recalling a lived experience or indirectly through their imagination.⁴⁰ For example, a judge might use their imagination to 'neutralise any feelings they have for the accused'.⁴¹ Genuine emotional response is also relevant in terms of how judges manage their emotions.⁴² As referenced above, Bolton describes how professional feeling rules are learned and internalised over time through occupational acculturation. This can result in

³⁵ J. Van Maanen and S. Barley, 'Occupational Communities: Culture and control in organisations' (1984) 6 *Research in Organizational Behavior* 287.

³⁶ Bolton, *Emotion Management in the Workplace* (2005) 122.

³⁷ *id.* p.123.

³⁸ Hochschild, *op. cit.*, n.26.

³⁹ Ashforth and Humphrey, *op. cit.*, n.34.

⁴⁰ A.A. Grandey et al, 'Work-family supportiveness in organizational perceptions: Important for the wellbeing of male blue-collar workers?' (2007) 71(3) *J. of Vocational Behavior* 460; A. Rafaeli and R.I. Sutton, 'Expression of Emotion as Part of the Work Role' (1987) 12(1) *The Academy of Management Rev.* 23.

⁴¹ Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p.143.

⁴² Ashforth and Humphrey, *op. cit.*, n.34.

genuine emotional responses which inevitably require less deliberate emotion management,⁴³ but are the result of past emotional labour.⁴⁴

3. EMOTIONAL LABOUR AND JUDICIAL OFFICERS

There is limited discussion in current scholarship of the ways in which judges perform emotional labour in their relationships with jurors. Brief reference to judges being required to manage their emotions in the presence of a jury is found in Elek's study of US judges' perspectives on professional development.⁴⁵ Elek highlights the importance of demonstrating judicial objectivity, and observes the importance of trial judges managing their emotions to ensure they do not influence the jury.

However, previous research has accounted for how judges manage and perform their emotions in their interactions with court users and actors in a broad sense. The judicial role as an 'objective' and 'neutral' decision maker⁴⁶ has resulted in overarching organisational, occupational and perhaps even societal feeling rules of neutrality,⁴⁷ or judicial objectivity.⁴⁸ Bergman Blix and Wettergren recognise the pervasiveness of traditional perceptions of judicial officers and the courtroom in which they work, situating their findings within what they describe as an 'emotive-cognitive judicial frame'. This frame determines how judges are expected to manage their own emotions and those of others with the main goal being judicial objectivity. However, it is important that judicial objectivity is not 'static and universal', but rather situated practice only achievable through 'objectivity work'. Objectivity work requires judges to engage in situated emotion management and empathy using skilled emotion management to ensure unemotional detachment.⁴⁹

Of particular importance to the Swedish judges in Bergman Blix and Wettergren's study is the demonstration of impartiality and objectivity. Bergman Blix and Wettergren describe how

⁴³ id.

⁴⁴ Bolton, op. cit., n.36.

⁴⁵ J. Elek, 'Judicial Perspectives on Emotion, Emotion Management, and Judicial Excellence in the USA' (2019) 9 *Oñati Socio-Legal Series* 865.

⁴⁶ Roach Anleu and Mack (2005), op. cit., n14, p. 601.

⁴⁷ Scarduzio, op. cit., n.3; M.L. Schuster and A. Proppen, 'Degrees of Emotion: Judicial Responses to Victim Impact Statements' (2010) 6(1) *Law, Culture and the Humanities* 75.

⁴⁸ Bergman Blix and Wettergren (2019), op. cit., n.14, p. 140.

⁴⁹ id., p. 141.

judge participants showed impartiality through power neutral or stone-faced expressions.⁵⁰ Clearly this requires the suppression of emotion,⁵¹ for example where a judge feels disgust at what the accused may have done but suppresses those feelings and thus demonstrates impartiality.⁵² However, Maroney suggests that putting on a ‘poker face’ requires intense emotional efforts and should only be used sparingly, for example, in order to maintain order in the courtroom.⁵³ However, judges are required not only to suppress emotion but also show certain emotions in their everyday work. A neutral or stone-faced expression does not simply require the suppression of emotion but a conscious presentation of emotions conveying an impartial demeanour.⁵⁴ This demeanour must be applied equally to all court users through the balancing of emotional expressions.⁵⁵

Judges also use empathy in their interactions with others.⁵⁶ Describing empathy as a ‘crucial tool’⁵⁷ in emotion management, Bergman Blix and Wettergren point to situations where judges use empathy, for example, when judges assess their ‘appearance of impartiality from the perspective of the defendant’.⁵⁸ However, judges ‘empathically attend’⁵⁹ to the emotions of court users differently in practical situations and case-related situations. In practical situations – not directly related to a case – a judge might give a friendly smile while asking a victim to follow procedure, or, as Bergman Blix and Wettergren have observed in Swedish trials, when asking a defendant about their personal life towards the end of a trial.⁶⁰ Emotional expressions of empathy can be more varied in these situations as they do not impact on views about judicial impartiality. However, where an empathic approach is taken in relation to a case, this can impact upon perceptions of judicial impartiality, and empathy must be presented in a more restricted way. This is achieved through ‘empathic perspective-taking’, where the judge ‘expresses empathy in an instrumental by-the-way manner’ thereby retaining impartiality.⁶¹

⁵⁰ *id.*

⁵¹ Maroney, *op. cit.*, n.2; Scarduzio, *op. cit.*, n.3; K.M. Snider et al, ‘Judges’ emotion: an application of the emotion regulation process’ (2021) *Psychiatry, Psychology and Law* 1.

⁵² Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p. 143.

⁵³ Maroney, *op. cit.*, n.2, p. 19.

⁵⁴ Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p. 143.

⁵⁵ *id.* p. 140. See also K. Mack and S. Roach Anleu, ‘Performing Impartiality: Judicial Demeanour and Legitimacy’ (2010) *Law & Social Inquiry* 137 at 139.

⁵⁶ Bergman Blix and Wettergren (2019), *op. cit.*, n.14; Roach Anleu and Mack (2005), *op. cit.*, n.14.

⁵⁷ Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p. 11.

⁵⁸ S. Bergman Blix and Å. Wettergren, ‘A Sociological Perspective on Emotions in the Judiciary’ (2016) 8(1) *Emotional Rev.* 32 at 35.

⁵⁹ Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p. 12.

⁶⁰ *id.*, p. 108.

⁶¹ *id.*

Examples of this type of empathic approach are also described by Australian magistrates in Roach Anleu and Mack's study as engaging with the difficulties faced by court users and includes the judge starting to record discussions in the courtroom or adjourning proceedings to allow people to 'cool off'.⁶² This results in judges engaging with the social situations of court users and yet also ensuring some distance to avoid over-identification with them.⁶³

There are times where judges show anger in the courtroom. This is one example of what Scarduzio describes as 'emotional deviance', whereby emotions are expressed in disregard of the feeling rules prescribed by an organisation.⁶⁴ It is therefore the opposite of emotional dissonance. Rather than feeling internally conflicted at having to present emotions they do not feel, the judge 'expresses inner feelings and disregards feeling rules'⁶⁵ in opposition to expectations they remain 'emotionally well-regulated'.⁶⁶ Scarduzio describes the emotional deviance performed by some US municipal judges as 'privileged deviance' and suggests that it 'highlights the intersections between power, status, and professionalism by pointing out which organisational members are able to violate norms with minimal sanctions and which are not'.⁶⁷ One way this occurs is through humour. Humour can be used in a negative way such as belittling a defendant,⁶⁸ or in a positive way, for example, as a tension reliever.⁶⁹ In Scarduzio's study, some US municipal judges, as a result of their power and status, were able to deviate from the organisational norm of neutrality and a "dead-pan" demeanour' to use humour to relieve tension during an arraignment:

For example, Judge Major comments,

I will come in [to arraignments] particularly when we have 70 people in there [the courtroom] and they say all rise when you walk in and I will say, 'You may have a seat—that is for those of you that can find one.'⁷⁰

⁶² Roach Anleu and Mack (2005), op. cit., n.14, p. 608.

⁶³ id.

⁶⁴ Scarduzio, op. cit., n.3, p. 283.

⁶⁵ Rafaeli and Sutton, op. cit., n.40, p. 33.

⁶⁶ Maroney and Gross, op. cit., n.5, p. 142.

⁶⁷ Scarduzio, op. cit., n.3, pp. 284-5.

⁶⁸ id., p. 299.

⁶⁹ Roach Anleu and Mack (2005), op. cit., n.14; Scarduzio, op. cit., n.3; Wojciechowski et al, op. cit., n.15.

⁷⁰ Scarduzio, op. cit., n.3, p. 298.

Another judge in the study maintains, ‘we need to make them feel that we’re respecting them and humour does that’.⁷¹ Here we see judges using their power and status to deviate from certain emotional labour expectations to display their humanness, which more closely connects them with others in the courtroom. This goes some way to perhaps dispelling ‘the myth about the non-human-ness of judges’.⁷² Furthermore, as an act of public disclosure this performance of emotional labour might also be beneficial in normalising judicial emotion.⁷³

While research considers the approaches used by judges in managing and performing emotions in the courtroom more broadly, their interactions with, and management of the jury have yet to be explored in any detail. This article begins to fill this gap in the literature by using the experiences and perspectives of Irish criminal trial judges as a case study to illustrate how judges learn and habituate professional feeling rules and thus perform emotional labour in the direction and management of juries. In so doing, we highlight four themes we identified in the data: how judges learn the professional feeling rules of their role, how they perform emotional labour by managing their own emotions in their interactions with jurors, how they manage the emotions of jurors, and how they perform emotional labour to mitigate the emotional impact of jury service.

4. JUDICIAL AUTHORITY IN CRIMINAL JURY TRIALS IN IRELAND

While a large majority of criminal cases in Ireland are tried by a judge sitting alone in the District Court, the Constitution requires that serious offences be tried by a jury.⁷⁴ Criminal jury trials in Ireland are conducted in the Circuit Criminal Court and Central Criminal Court. The Circuit Criminal Court is organised on a regional basis, with sittings held at venues at each of its eight circuits. It has jurisdiction to deal with all indictable offences, except those over which the Central Criminal Court has jurisdiction (including murder, rape, aggravated sexual assault, piracy and treason). The Central Criminal Court sits in Dublin and sometimes in regional towns and cities.

⁷¹ *id.*

⁷² C.M. Oldfather, ‘Judges as Humans: Interdisciplinary Research and the Problems of Institutional Design’ (2007) 36 *Hofstra Law Rev.* 125 at 127.

⁷³ Maroney, *op. cit.*, n.2.

⁷⁴ Article 38.5 of the Constitution of Ireland.

There are some distinctive features of the Irish judicial system worth noting, particularly as points of divergence with other jurisdictions where judges' emotional labour have been studied. First, unlike Sweden, and other civil law jurisdictions, there are no lay judges in Ireland. Lay jurors are the sole substantive decision-makers in criminal trials. The professional judge does not have an inquisitorial role, but rather acts as a manager or umpire. Secondly, Irish judges are appointed rather than elected, by contrast with many parts of the United States, and thus do not have to consider issues such as public popularity or re-electability. Thirdly, Irish judges have more autonomy over the running of criminal trials compared with judges in the United Kingdom, where interactions with jurors generally conform to more tightly prescribed conventions. By contrast, the Irish jury trial is less structured. So, Irish criminal judges have a managerial role with limited substantive decision-making, enjoy a degree of autonomy in how they interact with jurors and other court users, and are not constrained by the need to maintain public popularity. Furthermore, features of the jury trial existing in other jurisdictions have not been introduced in Ireland. For example, there is no statutory offence of juror misconduct in Ireland and jurors do not receive the same kinds of support (e.g. financial assistance, access to counselling) which are common in jurisdictions such as Australia and New Zealand.

In supervising the conduct of the proceedings, the judge is a figure of considerable importance in a criminal jury trial, maintaining a 'unique authority over all other players.'⁷⁵ The Irish courts have underlined that it falls on the judge to ensure 'that all the requirements for a fair and proper jury trial [will] be observed.'⁷⁶ A strong emphasis has been placed on the perception of judicial impartiality for the preservation of public confidence in the administration of justice.⁷⁷ More recently, the importance of judicial impartiality from the perspective of the jury was highlighted in *People (DPP) v Rattigan*,⁷⁸ where Ms Justice O'Malley emphasised the importance of even-handed treatment of both sides by the judge:

Juries look to judges for impartial guidance that they do not necessarily expect to obtain from counsel. They tend to assume (as should be the case) that the judge will be neutral where counsel are obliged to be partisan, and will not lead them astray.⁷⁹

⁷⁵ D. Brooke, "'Entirely a Matter for You": Summing Up in England and Wales – Part I' (2009) 27 *Irish Law Times* 239 at 239.

⁷⁶ *People (DPP) v O'Shea* [1982] IR 384, at 432 (Henchy J).

⁷⁷ *Dublin Well Woman Centre Ltd v Ireland* [1995] 1 ILRM 408.

⁷⁸ *People (DPP) v Rattigan* [2018] 1 ILRM 145.

⁷⁹ *id.*, 167 (O'Malley J).

A key aspect of the judicial role in a criminal jury trial is the provision of guidance to jurors, both regarding substantive law and procedure, and also in relation to the jury's role and responsibilities. The centrepiece of this guidance is the summing up or charge to the jury, where the judge addresses the jurors immediately prior to their commencement of deliberations. The judge will usually provide a summary of the evidence, explain core principles including the burden and standard of proof and the presumption of innocence, outline the legal ingredients of the relevant offences and defences, and outline the issues to be determined by the jury. The length of a judge's charge will vary in tandem with the length and complexity of the trial and the approach of the judge. In Ireland the charge remains a completely oral endeavour; the written materials provided to jurors in most common law jurisdictions have not been adopted.⁸⁰ As we have written elsewhere, when asked to describe their role in a criminal jury trial, Irish judges emphasised the interactive nature of their relationship with juries, with respectful and considerate treatment of jurors seen as foundational in this relationship.⁸¹ Empirical research on the judiciary in Ireland is limited, with brief insights on judicial culture and practices to be gleaned from studies of judicial appointments⁸², judicial education⁸³ and disciplinary processes.⁸⁴

5. METHODS

This article draws upon the findings of a qualitative study of judge-jury interactions in Ireland. Specifically, this research sought to examine judicial and legal practitioner perspectives on how judges conduct criminal jury trials and interact with jurors. The data was generated from semi-

⁸⁰ Over the past decade, the provision of structured decision trees or flowcharts to jurors has become common across common law jurisdictions. These written aids are tailored to individual cases and guide jurors through the sequential decisions they should make when deciding on their verdict. Different terms are employed for such aids - 'route to verdict documents' in England and Wales, 'question trails' in New Zealand and 'decision trees' in Canada, for example.

⁸¹ Coen et al., op cit., n.16.

⁸² D. Feenan 'Judicial Appointments in Ireland in Comparative Perspective' (2008) 1 *Judicial Studies Institute Journal* 37; J. Carroll MacNeill *The Politics of Judicial Selection in Ireland* (2016); L. Cahillane 'Judicial Appointments in Ireland: The Potential for Reform' in L. Cahillane et al (eds) *Judges, Politics and the Irish Constitution* (2017) Ch.8; J. Carroll MacNeill 'Changing the Judicial Selection System in Ireland' in E Carolan (ed) *Judicial Power in Ireland* (2018).

⁸³ Howlin et al., op cit., n.25.

⁸⁴ See D. Gwynn Morgan 'Judicial Discipline: Where do we Stand? A Consideration of the Curtin Case' (2009) 27 *Irish Law Times* 26; L. Cahillane 'Disciplining Judges: The Special Position of District Court Judges' (2009) 5 *Irish Law R.* 14; L Cahillane, 'Ireland's System for Disciplining and Removing Judges' (2015) 38(1) *Dublin University Law J.* 55.

structured interviews with 33 participants: 22 judges and 11 barristers. Judges were drawn from the Central and Circuit Criminal Courts, and all barristers had criminal practices and experience of criminal jury trials. The discussion presented in this article is based on data from the judge cohort.

Recruitment of judge participants was based on purposive sampling, with experience of presiding over criminal jury trials being the single criterion for selection. Letters were sent to 47 serving and retired Central and Circuit Criminal Court judges throughout Ireland inviting them to participate in the research. Responses were received from 26 judges, and 22 participated in interviews. The sample consisted of sixteen men and six women. Four participants were retired at the time of data collection. Length of service ranged from one year to 31 years. Experience of criminal jury trials varied across the sample; five participants reported less than 20 jury trials, while ten participants estimated they had presided over more than 100 criminal jury trials at the time of interviews. All participants had experience of working in courtrooms as legal practitioners prior to their appointment to the bench. While most had practitioner experience in criminal trials, many participants highlighted the difference between the judicial role and that of the advocate.

Institutional ethical approval was granted in early 2017. Interviews with judge participants took place between June 2017 and May 2018. Twenty-one interviews were audio-recorded and subsequently transcribed. One participant requested not to be recorded and detailed notes were taken by the interviewer and typed up immediately following the interview. All data was fully anonymised, and each judge participant was assigned a number. While the sample and data collection method place limits on generalisability, the use of semi-structured interviews facilitated an in-depth exploration of participants' perspectives and practices relating to their interactions with juries and subjective descriptions of the emotions they presented.⁸⁵ The qualitative nature of this study therefore enables the rich accounts collected to stand alone and, in the context of this article, contribute to understanding the under-explored topic of the emotional labour of judges in jury trials. However, as interviews were the sole data collection method, the performative element of judges' emotional labour could not be fully explored.

⁸⁵ S. Kvale, *Doing Interviews* (2007).

The interviews focused on judges' experiences of presiding over jury trials, their perceptions of their relationship with jurors and their approaches to interacting with jurors. A semi-structured interview schedule was used, in which judicial perspectives on several discrete topics were sought, including approaches to charging juries, juror comprehension, deliberations and misconduct. Most questions were open-ended, allowing participants to fully discuss their experiences and views, and the flexibility of the semi-structured approach facilitated the exploration of unanticipated topics.⁸⁶ Examining judicial perspectives on emotion and experiences of emotional labour was not a primary aim of this research, and the interview guide therefore did not include any questions directly addressing emotions and emotional labour. Rather, judicial perspectives on emotions and emotional labour in criminal jury trials emerged as an unexpected topic in the current study, similar to Roach Anleu and Mack's research with Australian magistrates.⁸⁷ During and after the fieldwork, it was noted that many participants identified emotions as important in their interactions with jurors, describing how they managed both their own and jurors' emotions during trials.

The salience of emotion and the performance of emotional labour in the data was investigated using thematic analysis, a theoretically flexible approach for identifying and analysing patterns and meaning within data, suitable for an under-explored topic.⁸⁸ A broad approach was adopted for initial coding of the transcripts using NVivo and Microsoft Word, which ensured data extracts were contextualised.⁸⁹ Codes were then clustered together as possible themes, and these were reviewed for internal consistency and coherence by the research team. Emotional labour was identified as a theme within the data, with several sub-themes related to how judges learn the feeling rules implicit within their roles, how they manage their own emotions in their interactions with jurors, how they manage the emotions of jurors, and how they use emotion management strategies to mitigate the emotional impact of jury service. These sub-themes are explored in the next section.

6. FINDINGS

⁸⁶ A. Galletta, *Mastering the Semi-structured Interview and Beyond: From Research Design to Analysis and Publications* (2013).

⁸⁷ Roach Anleu and Mack (2005), *op. cit.*, n.14.

⁸⁸ V. Braun and V. Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) 11(4) *Qualitative Research in Sport, Exercise and Health* 589.

⁸⁹ R. E. Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (1998).

6.1 Learning on the job: professional feeling rules of criminal jury trial judging

Previous research indicates that judges perform and manage their emotions in accordance with explicit and implicit societal, organisational and occupational or professional feeling rules, which function as cultural norms to shape the relationship between emotion and judicial practice.⁹⁰ While some of these norms may be explicitly communicated in written statements such as codes of practice, conduct guides and similar publications, these have tended to focus on broad statements promoting the principles of integrity, independence and impartiality.⁹¹ This means that the more granular conventions governing how judges manage their own emotions and those of other court actors are mainly unwritten, embedded in occupational culture and traditions. Recently, formal guidance in some jurisdictions has gone further to offer more direct guidance on appropriate judicial conduct. For example, the Equal Treatment Bench Book in England and Wales includes brief reference to the importance of empathy for court users' experiences alongside advice to avoid language and facial expressions that may create an impression of partiality or unfairness.⁹² The second edition of the Equal Treatment Bench Book published by the Supreme Court of Queensland encourages judges to be cognisant when interacting with court users of differing cultural traditions that may impact court users' communication and emotional needs.⁹³ In Ireland, appropriate judicial emotional practice has long been primarily implicit and unwritten, although formal conventions may yet emerge following the publication of the first formal guidelines concerning judicial conduct and ethics in 2022,⁹⁴ and the development of the first formal judicial training programme by the Judicial Studies Committee in 2020⁹⁵. The absence of written conventions has meant that until very

⁹⁰ S. Roach Anleu and K. Mack 'A Sociological Perspective on Emotion Work and Judging' (2019) 9(5) *Oñati Socio-Legal Series* 831.

⁹¹ Some examples include the Bangalore Principles, which promote the importance of avoiding the appearance of partiality, Judicial Group on Strengthening Judicial Integrity, *The Bangalore Principles of Judicial Conduct* (2002) <www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf> and the American Bar Association Model Code of Judicial Conduct, which instruct judges to uphold and promote the independence, integrity, and impartiality of the judiciary, American Bar Association, *Model Code of Judicial Conduct* (2020). <www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/>.

⁹² Judicial College, *Equal Treatment Bench Book: February 2021 Edition (December 2021 Revision)* (2021) <www.judiciary.uk/publications/december-interim-revision-of-the-equal-treatment-bench-book-issued/>.

⁹³ Supreme Court of Queensland, *Equal Treatment Bench Book: Second Edition* (2016) <www.courts.qld.gov.au/_data/assets/pdf_file/0004/94054/s-etbb.pdf>

⁹⁴ Judicial Council, *Guidelines for the Judiciary on Conduct and Ethics* (2022). <<https://judicialcouncil.ie/publications>> While these guidelines underline the importance of avoiding the appearance of partiality, but do not explicitly address feeling rules.

⁹⁵ See further, The Judicial Council, *Annual Report 2020* (2021) 16-18, <https://judicialcouncil.ie/assets/uploads/documents/Annual_Report_2020_English.pdf>. Every judge appointed since July 2020 has undertaken induction training and attended workshops on judicial conduct and ethics.

recently, including during data collection for the current study, Irish judges were expected to intuit unwritten conventions governing appropriate judicial conduct. This section therefore presents findings on how judges in our study learned and habituated implicit professional feeling rules.

Some participants pointed to their experience of courtroom settings as a legal practitioner as helpful when learning professional feeling rules for interacting with juries. Those with experience of criminal practice particularly valued being able to observe judges in their interactions with jurors from the perspective of a practitioner prior to their own transition to the bench. These observations were a useful starting point, and from there judges could develop their own approaches to interacting with juries that conformed to expected professional feeling rules.

As noted above, data collection preceded the introduction of the first formal judicial education programme in 2020, meaning formal training was not available for the judges in our study following their appointment.⁹⁶ While training is used to communicate feeling rules in several professions, the management of their own and other court actors' and users' emotions is frequently an area in which judges lack formal training.⁹⁷ In a broader sense, newly appointed Irish judges were occupationally acculturated into their role through a largely informal process of peer and experiential learning.⁹⁸ One participant described how this operated:

I mean, occasionally you will see new Circuit judges ... go up to the gallery where they won't be seen and they'll just watch the main portions of a full trial and get an idea of just how people interact, the procedural rules and how particular problems may be dealt with by the judge ... that works alright.

(Judge 08)

Newly appointed judges are required to become accustomed to professional feeling rules through informal processes. This is achieved through observing or shadowing more

⁹⁶ See further, The Judicial Council, Annual Report 2020 (2021) 16-18, <https://judicialcouncil.ie/assets/uploads/documents/Annual_Report_2020English.pdf>. Every judge appointed since July 2020 has undertaken induction training and attended workshops on judicial conduct and ethics.

⁹⁷ Elek, op cit., n. 45; T. A. Maroney, 'The Emotionally Intelligent Judge: A New (and Realistic) Ideal' (2013) 49 *Court Review* 100.

⁹⁸ Howlin et al., op cit., n.25.

experienced judges to learn about their approaches to trial management, jury charges and other processes relevant to criminal jury trials. Such practices also offered an opportunity to observe how judges perform emotional labour to conform to professional feeling rules which govern interactions with juries and appropriate emotional presentation.

However, while shadowing and observation provide examples of the emotions judges should present towards jurors, newly appointed judges often experienced nervousness, uncertainty and shyness when interacting with jurors, feelings they would not wish to show to jurors, resulting in surface acting while they develop their practice:⁹⁹

I think that I would be a little bit more confident now in my interactions with juries ... In the beginning when you are presiding over a trial and when eleven/twelve strangers come out to you, sometimes you can feel slightly shy and ill at ease in your dealings with juries and I think that that sense of unease dissipates over time and you feel more confident and you feel more confident about what you're saying because you've said it on many previous occasions and it hasn't gotten you into trouble [laughs].

(Judge 11)

I've changed in the sense that I've probably gotten a bit more confident in delivering [the charge to the jury] ... I used to be very nervous ... it's a very daunting prospect actually, the very first time you charge a jury.

(Judge 15)

Here, we also see how initial feelings of nervousness and uneasiness are replaced with confidence and assuredness. Their reflections also indicate that the need to surface act to display appropriate emotions dissipates as a judge becomes more experienced. What once required deliberate emotional labour in the form of surface acting because feelings were not aligned with expectations and experience has resulted in genuine emotions which align with professional feeling rules relating to interactions with juries.¹⁰⁰

⁹⁹ Hochschild, op. cit., n.26.

¹⁰⁰ Bolton, op. cit., n.36.

In relation to learning the professional feeling rules associated with being a judge, stories were recounted from the past of ‘stern’ (Judge 10) and ‘cantankerous’ (Judge 11) judges who were ‘terrifying for jurors’ (Judge 16), and contrasted with current presentations of judicial emotions:

I think that most of my colleagues would be conscious of the fact that we are living in a modern society and people are not going to tolerate rudeness and cantankerousness in any area of life, it’s just not acceptable anymore and I think that most people realise that is the case so we’re trying to put the best foot forward I think, most of the time. We all have our bad days, you know.

(Judge 11)

Bolton recognises that professional feeling rules are influential in ‘moulding professionals into the manner expected’.¹⁰¹ However, she also notes that professional groups are not consistently homogenous and can split into emergent groups or ‘segments’ ensuring feeling rules are renewed and renegotiated. Indeed, ‘often feeling rules emerge in an altered form and new understandings and ways of being are formed’.¹⁰² Here we see an example of how judges, influenced by wider societal expectations, have an altered understanding of which emotions are and are not acceptable for a judge to show in their interactions with jurors and other court actors.¹⁰³ In turn, feeling rules have emerged which commend behaviour that emphasises judges putting their ‘best foot forward’, in other words behaving well to gain approval from other court users including jurors.

6.2 Interactions with jurors

In the previous section judges reflected on changing emotional expectations which underlined the need for them to carefully manage their emotions when interacting with other court users. When it came to jurors in particular, judge participants were mindful of how jurors’ might perceive their performance as individual judges. For example:

¹⁰¹ *id.*, p.123.

¹⁰² *id.*, p.125.

¹⁰³ Mann, *op cit.*, n.33.

I would be very conscious that the jury is judging the judge as well, subconsciously. And there have been stories where judges interfered too much, and perhaps the jury would have taken exception to that. I would be conscious that it is natural in us all to judge each other.

(Judge 01)

This echoes Thompson's statement 'The jury box is where the people come into the court: The judge watches them and they watch the judge'¹⁰⁴ and is comparable to previous studies where judges 'express a concern for the kind of experience and impression a person will take away from the magistrates' court'.¹⁰⁵ In particular, Australian Magistrates in Roach Anleu and Mack's study were concerned with behaving in such a way as to ensure court users felt the process was fair and just. Our judge participants were also mindful of this and there are clear parallels with the way in which Swedish judges in Bergman Blix and Wettergren's study perform impartiality by adopting the same emotional register in relation to both prosecution and defence.¹⁰⁶ This was linked by some participants to how they perceived their role within the trial; as a referee or umpire who ensures a 'level playing pitch' (Judge 17) between opposing parties. Judges therefore perform emotional labour to conform to what might be considered overarching professional feeling rules connected with their 'hierarchically superior position compared with the other participants in the courtroom'¹⁰⁷ and thus ensure all present see justice is done by the judge.¹⁰⁸

However, whilst encompassing these overarching professional feeling rules, the relationship judges have with jurors is also quite different to the one they have with other court users. Juries occupy a unique courtroom role as their members are not court users, becoming instead, for a short time, court actors. Therefore, jurors are arguably temporary colleagues of the judge, with both judge and jury members being expected to interact with each other during the trial in these roles. Judges therefore realise they must conform to particular professional feeling rules in their interactions with jurors. Thus, while judges recognise they may have a 'bad day' (Judge 11) they are conscious of the need to suppress certain emotions, particularly those of anger or impatience:

¹⁰⁴ E.P. Thompson, *Writing by Candlelight* (1980) 99.

¹⁰⁵ Roach Anleu and Mack (2005), op cit., n.14, p.606.

¹⁰⁶ Bergman Blix and Wettergren (2019) op. cit. n.14.

¹⁰⁷ Roach Anleu and Mack (2005), op. cit. n.14, p. 609.

¹⁰⁸ Bergman Blix and Wettergren (2019) op. cit. n.14.

I would never, ever lose my cool. I mean if you lose your cool you've lost the plot and to a certain extent you're going to alienate a jury. And that's something you never want to do so you don't.

(Judge 17)

Judge 17 comments that while it is possible for a judge to 'lose their cool' or get angry in front of the jury, professional feeling rules require judges to remain in control of undesirable emotions. While this means that surface acting may be required to suppress such emotions, Bolton suggests that situations such as the one described by Judge 17 do not represent difficult work, and rather become an integral part of the job, underpinned by the sincere attachments that professionals have to their professional image.¹⁰⁹

Avoiding alienating the jury was not the only reason judges found it necessary to suppress certain undesirable emotions. Judges also placed a high priority on avoiding an overly informal judge-jury dynamic:

[O]ne also has to be conscious that if one is too casual with the jury someone on a jury might think 'Well I don't have to bother coming in tomorrow that judge is an awful nice fella and if I don't turn up tomorrow sure that'll be fine.'

(Judge 13)

Well, you don't want to get overly matey with them and I mean it's not a sort of clubbish sort of atmosphere.

(Judge 08)

These quotes illustrate a common view among judge participants that professional feeling rules dictate that although judges are in some ways temporary colleagues of jurors, the relationship is asymmetrical with considerable differences in power, status and procedural knowledge.¹¹⁰ Judges are expected to recognise the unique relationship they have with jurors as temporary

¹⁰⁹ Bolton, op. cit., n.36.

¹¹⁰ J. Gibbons, 'Towards Clearer Jury Instructions' (2017) 4 *Language and Law/Linguagem e Direito* 142.

colleagues, yet also convey the seriousness of the jury's role in a case. They must therefore balance potentially conflicting professional feeling rules. As Judge 15 comments:

There has to be a distance because you wouldn't want to be seen to be, you know, smiling or winking over at the jury because that then might mean you're giving some signal to them in relation to the evidence that's been given. So, I think that, you know, a distance but without being aloof if you understand what I'm trying to say.

(Judge 15)

Participants' accounts of their interactions with juries also point to an understanding that the balancing of different emotions they presented inevitably meant there were performative elements to their role. As one judge reflected, getting this performance 'right' was important:

You don't want to be a boring old lecturer and you don't want to be a comedian. And you've got to hit somewhere that puts over the essence of their role ... and then send them off to do their vital side of the job.

(Judge 07)

This perspective illustrates that in addition to being emotional places,¹¹¹ courtrooms are also sites of performance and impression management.¹¹² Both Judge 07 and Judge 01 above recognise the jury as their audience, to whom they seek to portray themselves in a favourable light and in ways appropriate to their role, the setting and the rules governing the conduct of trials. As Judge 11 states:

I think that we are the public face of the justice system and we're endeavouring to, I suppose, impress people by the system because people come in sometimes with negative views of the system and you want them to go away with perhaps more positive view of the system than they came in with. So, I feel we all have a responsibility to give the best impression of our system than we can and that involves being pleasant in your interactions with juries and putting them at ease without compromising the formality of the process.

¹¹¹ Å. Wettergren and S. Bergman Blix, 'Empathy and Objectivity in the Legal Process: The Case of Swedish Prosecutors' (2016) 17 *J. of Scandinavian Studies in Criminology and Crime Prevention* 19.

¹¹² E. Goffman, *The Presentation of the Self in Everyday Life* (1959).

(Judge 11)

Impression management is therefore used by judges to achieve a range of motivations:¹¹³ to enable the judge to oversee the trial effectively, to carve out the space where the jury does its work and to ensure jurors have a positive experience of jury service and the legal system. This in turn requires judges to manage emotions in various and often nuanced ways. In exercising impression management, judges must be aware of the local culture of the courtroom and the conduct of trials and manage their emotions to conform to professional feeling rules specific to their unique relationship with jurors. Furthermore, there is a recognition of the need for distance between judges and juries, requiring judges to ensure they show emotions which demonstrate impartiality and neutrality, while simultaneously presenting emotions that support and show respect for jurors.

6.3 Managing jurors' emotions

Although jurors may be characterised as judges' temporary colleagues, they, like many lay court users, are likely to be unfamiliar with the court setting and procedure. Indeed, several participants pointed to jurors' lack of familiarity with the criminal trial process as presenting both practical and emotional challenges, and some suggested it is therefore incumbent upon judges to ensure jurors are made to feel comfortable in their new setting and role:

It's very important for me to try and put them at their ease to a certain extent and try and explain the process because you can see quite visibly. It doesn't take a rocket scientist to see bewilderment. They know how they got here in answer to a summons. They're not quite sure how they wound up on the jury and they're not quite sure what is expected from them. There are some that might feel that this will all be over in an hour just like it is on television, but it's a very different experience.

(Judge 19)

You don't want [jurors] to feel nervous. You want them to be at their ease. The danger is that if they feel nervous, they won't be able to apply themselves to the task in hand.

¹¹³ id.

So, it's important that they feel at their ease and know exactly what the task is and basically explain to them 'Look ... you rely on the evidence.'

(Judge 17)

Important in the successful performance of emotional labour is emotional awareness of others. As Holmes observes, awareness of others' emotional experiences can result from emotional reflexivity, which is 'the intersubjective interpretation of one's own and others' emotions and how they are enacted [...] It is a capacity exercised in interaction with others.'¹¹⁴ In the previous section judges recalled how they used emotional reflexivity to manage their own emotions, while here we see emotional reflexivity to consider how a person may feel when taking on the role of a juror, and in particular that it may not align with the juror's preconceptions of how jury trials proceed. Both Judge 19 and Judge 17 describe being able to see from the way that newly appointed jurors act that they themselves must perform emotional labour to manage emotions associated with feeling ill at ease. For judges to become aware of this they must use empathy to take the perspective of a prospective juror at the beginning of a trial, similar to Swedish judges in Bergman Blix and Wettergren's study.¹¹⁵ Judge 17 elaborates on the emotions jurors might be feeling when they appear ill at ease, as well as providing one of the ways in which they perform emotional labour to support jurors to feel more comfortable in their role. They also instil confidence in jurors by providing clear directions allowing them to focus on the task in hand.

Putting the jury at ease is important for judges at the beginning of a trial, when developing trust and rapport. This continues throughout the trial, with judges endeavouring to maintain the trust relationship. For the judges in our study, understanding the emotions of others remained an important aspect of their role to provide clear signposting and direction ensuring the trial proceeded efficiently. However, it also provides an important link for the judge to the unique experience of jurors, and the impact it might have on their wellbeing. As one judge explains: 'It's important that the judge at least indicates to the jury that he/she is concerned for their welfare and is there to assist them' (Judge 14). Therefore, demonstrating concern for juror wellbeing is an important professional feeling rule and thus not considered a transgression of

¹¹⁴ M. Holmes, 'Researching Emotional Reflexivity' (2015) 9(1) *Emotion Review*, 61 at 61.

¹¹⁵ Bergman Blix and Wettergren (2018), op. cit., n.14.

professional boundaries. Judges understood that part of this duty of care required them to be, at times, humorous or witty when interacting with jurors:

I know when people come in and have to sit on a jury, they're obviously tensed up; they've never gone through this procedure before. I try to talk to them in a manner which would relax them all the time and the odd time you might make a witty remark just to ease the tension, you know.

(Judge 20)

And I used to jokingly say near the end, "I'm not going to let you up town to see the latest showing of how many shades of grey was it?" Whatever it was. [laughing] And they'd say, "Oh well Jesus this guy is kind of half human." Because they're looking at somebody with a wig on him, with the formal gear, and it relaxes them, and it says to them that this guy understands ... I would have viewed my relationship with them that I'm the boss. But I would like to be the boss in as kindly and as understanding a way that I could.

(Judge 01)

Both Judge 20 and Judge 01 have again placed themselves in the position of the juror,¹¹⁶ understanding that they may well feel tense and emotionally overwhelmed by the courtroom and indeed themselves as judges,¹¹⁷ and used humour to relieve tension¹¹⁸ to relax jurors. In both cases we see privileged emotional deviance where the judge makes a witty or humorous remark in disregard of professional feeling rules which dictate suppression of emotion by judges in order to retain impartiality and neutrality.¹¹⁹ Furthermore, Judge 01 engages in privileged emotional deviance through humour to arguably reduce the power differential between them as the judge and the jury and demonstrate their humanness, thus normalising judicial emotion.¹²⁰ For Judge 01, the witty remark is also used as an emotion management tool to show respect to the jury, similar to judges in Scarduzio's study.¹²¹ Respectful treatment of jurors was a prominent topic of discussion throughout the interviews, and for many judges this

¹¹⁶ Bergman Blix and Wettergren (2018), op. cit., n.14; Roach Anleu and Mack (2005) op. cit., n.14.

¹¹⁷ Bergman Blix and Wettergren (2019), op. cit., n.14, p.108.

¹¹⁸ Roach Anleu and Mack (2018), op. cit. n.14; Scarduzio, op. cit., n.3; Wojciechowski, op. cit., n.15.

¹¹⁹ Scarduzio, op. cit., n.3. Bergman Blix and Wettergren (2018), op. cit., n.14.

¹²⁰ Maroney, op. cit., n.2.

¹²¹ Scarduzio, op. cit., n.3.

was grounded in practical concerns, which we have explored elsewhere.¹²² However, here judicial respect is not only about being courteous to jurors but involves getting to know and understand them and how they might be feeling. This in turn enables judges to assist jurors to manage their own emotions.

6.4 Managing the emotional impact of criminal trials on jurors

There is increasing recognition internationally of the impact of jury service on jurors' wellbeing. Studies have drawn attention to stress and anxiety experienced by jurors,¹²³ and research suggests that a minority of jurors may experience short- and long-term vicarious trauma following their participation in jury service.¹²⁴ It has also been suggested that judges are aware of the emotional impact of jury service, but often have limited avenues to provide support.¹²⁵ Many judges in the current study acknowledged the potential negative effects of jury service on jurors' emotional wellbeing. Some observed that jurors may experience emotional strain when considering a verdict, as their decision will have serious consequences for one or more parties involved in the case. The novelty of the courtroom setting and procedures for jurors was also highlighted as relevant here, with Judge 21 reflecting that the emotional weight of deliberations may be intensified by an unfamiliar experience:

I think if you're just plucked in off the street, so to speak, into that situation, it can be very daunting. I think, and there are serious consequences coming out of your decision and I think people are conscious of that. I think jurors are conscious of that. That, you know, there can be very serious consequences whichever way they go. So really what you're trying to do, you're really bringing them into the legal world for a short period of time, asking them to do something really important and then releasing them.

(Judge 21)

¹²² Coen et al., *op cit.*, n.16.

¹²³ M.K. Miller and B.H. Bornstein, 'The Experience of Jurors: Reducing Stress and Enhancing Satisfaction' in M.K. Miller and B.H. Bornstein (eds) *Stress, Trauma, and Wellbeing in the Legal System* (2013) 247.

¹²⁴ N. Robertson et al, 'Vicarious Traumatization as a Consequence of Jury Service', 48 *The Howard J. of Crime and Justice* 1 (2009) 1; E. Welsh et al, 'The Impact of Jury Service on Scottish Jurors' Health and Well-Being' (2020) 59 *The Howard J. of Crime and Justice* 3.

¹²⁵ D.M. Flores et al, 'Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study' (2009) 45 *Court Review: The J. of the Am. Judges Association* 76.

Several participants also pointed to the nature of the offence(s) and evidence, and underlined the need to understand and manage what may be very emotionally difficult circumstances for jurors. This was particularly highlighted by judges of the Central Criminal Court, who presided over trials involving fatal violence and serious sexual offences. These participants described attending to jurors' emotional needs, as they perceived them, by using humour, displaying gratitude or emphasising the importance of the jury's role in the trial process. As these participants explain, in their experience juries may need to be encouraged and reassured during and after these unpleasant cases:

[Jurors are] more or less dragooned into coming in and giving up periods of serving on what might be difficult or unpleasant cases. You know, I'm almost invariably up here in the Central Criminal Court doing sexual cases or murder and they're not particularly palatable, so you have to jolly them along a bit, and you do have to say even though they have been there by compulsion, 'Thanks very much for taking part and giving up this fortnight of your lives.'

(Judge 08)

If I think that a case has been particularly difficult and particularly in the Central [Criminal Court] where the cases are, as I say, serious and they have an emotional aspect to them, and the jury's worked very hard and it's very tiring and it's very difficult you can see they are upset when they come back, you can see they are exhausted and I think it is only fair to, well always, to thank them ... and to do that in a proper way.

(Judge 09)

Other participants similarly acknowledged the potential emotional toll on jurors of serving on trials where there may be heightened concerns about jury interference or intimidation from external sources. These participants described their efforts to reassure jurors and remind them that they could disclose any issues they may encounter during their service:

But what I did do at the end of the trial, when they had convicted him ... because I knew of their concerns, I said to them: 'Look, you've done exactly what you had to do' ... and that was to reassure them more than anything else because I knew they were worried and concerned about their safety having served on that jury.

(Judge 17)

[C]ertainly if I were going to be dealing with a, you know, ‘gangland’ type harm or something like that, you would be ... very alive to making sure the jury are looking comfortable and keeping an eye on them ... Making sure the channels of communication are open without saying why. But making sure that you have made it very clear that if there is anything you talk to me. I think you would be very careful in a case like that to make sure they know that.

(Judge 22)

Considerate treatment of jurors by judges has been identified as a key factor in mitigating the emotional impact of jury service.¹²⁶ However, as Maroney notes, judges often have limited ability to avoid or meaningfully alter emotion-provoking situations for jurors during a trial.¹²⁷ Acknowledging these limitations, some judges emphasised their practice of issuing future excusals from jury duty. When a judge releases a jury at the end of a trial they may choose to excuse jurors from serving on a jury for a specified period, including, where they see fit, for life.¹²⁸ This was described as a ‘little bonus’ (Judge 08) for jurors and a means to demonstrate to jurors that they are ‘really properly thanked’ (Judge 21) at the conclusion of an emotionally challenging trial. This practice of offering exemptions from future service represents a public acknowledgement of the emotional impact of jury service, and these exemptions become a gift that is presented in recognition of this emotional toll. These practices suggest that judges are aware of the emotional texture of the juror experience, and that they develop approaches to acknowledge and mitigate the negative emotional consequences of jury service where possible.

7. DISCUSSION AND CONCLUSION

This article contributes to our understanding of the emotional labour performed by judges in their interactions with other court users and actors by using the experiences and perspectives of criminal trial judges in Ireland as a case study to examine judicial approaches to emotion management in their relationship with jurors, a topic that has remained under-explored within the international literature on emotion and judging. It further contributes to extant literature by

¹²⁶ *id.*

¹²⁷ T.A. Maroney, ‘Emotional Regulation and Judicial Behaviour’ (2011) 99 *California Law Rev.* 1485.

¹²⁸ Juries Act 1976, s.9(8).

illuminating how Irish judges learned and habituated professional feeling rules. It additionally highlights how judges present emotions to jurors to demonstrate impartiality and objectivity, whilst also skilfully using empathy in various ways to keep the trial on track, put the jurors at ease and build rapport.

Judge participants described learning how to interact with jurors, and other court users and actors more broadly, primarily through a process of informal occupational acculturation. Here, professional feeling rules were mainly learned through observing more experienced judges, both from the perspective of a legal practitioner prior to their appointment to the bench and as a newly appointed judge. These observations aided judges in developing their own practices for interacting with juries within these feeling rules, with surface acting initially used to disguise unwanted emotions such as nervousness or uncertainty. This was particularly true in respect of newly appointed judges. Importantly, for judges in our study, information about expected feeling rules was wholly implicit and unwritten, meaning they did not have explicit or written sources to gain understanding of appropriate judicial emotional labour expectations. Our findings therefore illuminate how judges learn and habituate feeling rules not directly accessible in written guidance or made clear through formal training processes. With the Judicial Studies Committee's programme of formal education for Irish judges now underway, participants' experiences suggest that both newly appointed and experienced judges would benefit from training on emotion management strategies. Among the first initiatives introduced by the Judicial Studies Committee was training on avoiding retraumatisation in sexual violence trials, piloted with experienced criminal trial judges in 2021.¹²⁹ Announcing this training, Minister for Justice Helen McEntee stated:

When a person becomes the victim of a terrible crime, I want them to have the confidence that the criminal justice system, and all those who work within it will treat them with dignity and empathy and will support them at every turn.¹³⁰

Here, we see explicit reference to emotions to be used by Irish judges in sexual violence trials, which mirrors some of the written guidance recently emerging in other jurisdictions, such as

¹²⁹ The Judicial Council, *Judicial Studies Committee – Latest Events* (2022) <<https://judicialcouncil.ie/judicial-studies-committee>>.

¹³⁰ Department of Justice, *Specialist training across Justice Sector to better support victims in sexual violence cases announced by Minister McEntee* (2020) <www.justice.ie/en/JELR/Pages/PR20000250>

England and Wales and Queensland, as discussed earlier. As judicial education continues to develop through formal training and publications such as conduct guides, we argue that understanding how judges learn and become acculturated to less easily discerned professional feeling rules is of critical importance in drafting meaningful direct guidance on appropriate judicial practice. We therefore encourage researchers to engage in further empirical explorations of emotional labour performed by judges with jurors and other court users and actors, the findings of which could be used to inform training programmes, judicial manuals, ethical guidelines and other relevant materials.

The findings presented in this article illuminate judges' awareness of emotions and practices in the context of emotional labour by adhering to professional feeling rules which focus on the preservation of professional integrity and a duty of care towards jurors. Clear overlaps with previous studies of judges have been identified in our study. Our participants were acutely aware that the courtroom is an emotional arena, and they are expected to manage both their own emotions and those of jurors within an 'emotive-cognitive judicial frame'.¹³¹ Similar to the Swedish judges in Bergman Blix and Wettergren's study, of particular importance to judge participants is projecting the impression of neutrality to other court actors. This is achieved by managing, and where necessary suppressing, emotions in order to ensure the requisite 'distance' between themselves and the jury is maintained. This type of impression management is directed both at the jury and also at other court users.

Maroney makes reference to the fact that judges in different jurisdictions will have 'distinct cultural scripts' and that 'judicial objectivity' will vary depending on the country in which the judge conducts their role.¹³² Bergman Blix and Wettergren concur, observing that judges in different countries are influenced by 'culturally specific emotional regimes'.¹³³ The current study sees Irish judges make clear reference to the need for a 'balance' in their emotional displays towards juries, described by Judge 15 as 'distance without being aloof', and Judge 07 as not wanting to be either 'a boring old lecturer' or 'a comedian'. As the judge presiding over the case, it is incumbent upon them to place justice and therefore neutrality, objectivity and impartiality at the heart of their administration of trials, but also to acknowledge the performative element of their role in the courtroom. This emphasis on balance hints that Irish

¹³¹ Bergman Blix and Wettergren (2019), *op. cit.*, n.14, p. 141.

¹³² Maroney, *op. cit.*, n.14, p. 814.

¹³³ Bergman Blix and Wettergren, *op. cit.*, n.58, p. 32.

judges in the study are mindful of both professional and societal feeling rules, affecting the culturally specific emotional regimes to which the judges are subject. They are therefore required to balance the emotions they present carefully.

Given the limits of our study, both in terms of its focus and the method by which data was gathered, the performative element and thus the balance of emotions expected of Irish judges could not be fully explored. Therefore, it would be beneficial for future research to be conducted on the emotional labour performed by judges in jury trials, both in Ireland and internationally, to develop a further understanding of this aspect of the judicial role. This could include not only semi-structured interviews but also observations of judges in the courtroom to shed further light on the performative element of the emotional labour undertaken by judges in their interactions with juries and other court actors, including witnesses (who, like jurors, are temporary but vital court actors).

The judges we interviewed were mindful of developing a good working relationship with jurors. This required building trust and rapport with them. Central to this was empathy, which was demonstrated in a by-the-way manner.¹³⁴ However, judge participants also described how they used empathy to also show their concern for jurors' wellbeing. Additionally, we see the use of humour to demonstrate their understanding of the juror's position. While this may be considered privileged deviance,¹³⁵ how this is described suggests it forms part of the service provided to jurors in recognition of the sustained civic engagement they undertake. This service requires judges to be a good host to the jury, and display their humanity.

The emotional labour performed by judges in our study was considerable. They were cognisant of the need to strike a balance between showing impartiality and demonstrating concern for jurors' emotional needs. Managing emotions in this way can be challenging, and newly appointed judges in particular described using surface acting to ensure they conformed to expected professional feeling rules. The performance of emotional labour using surface acting has been shown to have potentially deleterious effects on workers and can lead to burnout in the form of depersonalisation or emotional exhaustion.¹³⁶ Indeed, being a judge and running a criminal trial can entail intensive emotional labour, wherein judges are required to skilfully

¹³⁴ Bergman Blix and Wettergren (2019), *op. cit.*, n.14.

¹³⁵ Scarduzio, *op. cit.*, n.3.

¹³⁶ Hochschild, *op. cit.* n.26, p.18; Maroney, *op. cit.*, n.2; Roach Anleu and Mack (2005), *op. cit.*, n.14.

manage their own and others' emotions in often demanding circumstances. As Maroney argues, an appreciation of judges' humanity and the role of emotion in human life would facilitate the acceptance and examination of judicial emotion.¹³⁷ Further research is needed to understand the consequences of performing emotional labour for judges and how potentially negative effects can be ameliorated.

One way in which Bergman Blix and Wettergren see potentially negative emotional consequences for judges being reduced is by engaging in critical reflection. They maintain that there needs to be 'an emotionally embedded tolerance of emotional talk and extended knowledge in the first place'.¹³⁸ Maroney concurs, commenting that 'sharing emotional challenges with other judges is particularly beneficial, strengthening camaraderie and facilitating mutual support', but adds that this appears rare amongst US judges.¹³⁹ However, Maroney suggests that there is limited sharing of emotions unless it is done by the more experienced 'senior' judge.¹⁴⁰ Alongside uncovering the consequences of emotional labour for judges, scholarship and practice would benefit from increased understanding of the ways in which judges cope with the emotional burdens of their job. Yet, discovering ways of coping with the emotional texture of their everyday work should not solely fall on the shoulders of the judges themselves. The acknowledgement at organisational and governmental levels of the emotional labour performed by judges and the provision of ongoing training and support (in addition to education provided to newly appointed judges) is critically important.

¹³⁷ Maroney, *op. cit.*, n.2.

¹³⁸ Bergman Blix and Wettergren, *op. cit.*, n.8, p. 174.

¹³⁹ Maroney, *op. cit.*, n.2, p. 18.

¹⁴⁰ *Id.*